

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

UNITED STATES OF AMERICA )  
Plaintiff, ) 3:03-cr-00123 JWS  
vs. )  
TRENT DONYA ANTWINE, ) ORDER FROM CHAMBERS  
Defendant. ) [Re: Motion at docket 693]

## I. MOTION PRESENTED

At docket 693 plaintiff filed a motion to dismiss defendant's § 2255 motion as untimely filed. The motion to dismiss was briefed, and the magistrate judge to whom the matter had been referred, Magistrate Judge Roberts, filed a report at docket 700 recommending that the motion to dismiss be denied as to Ground One and granted as to Ground Two of the § 2255 motion. Timely objections were filed by plaintiff at docket 704. Defendant filed no objections and did not respond to the objections filed by plaintiff. Thereafter, the magistrate judge filed a final report at docket 708 which addressed the objections and which continued to recommend that the motion to dismiss be denied as to Ground One and granted as to Ground Two.

## II. STANDARD OF REVIEW

The district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.”<sup>1</sup> When reviewing a magistrate judge’s

<sup>1</sup>28 U.S.C. § 636(b)(1).

report and recommendation in a case such as this one, the district court conducts *de novo* review of all conclusions of law,<sup>2</sup> and any findings of fact to which objections have been made.<sup>3</sup> Uncontested findings of fact are reviewed for clear error.<sup>4</sup>

### **III. DISCUSSION**

Having reviewed the file and applied the standard of review articulated above, this court concludes that the magistrate judge has correctly found the facts and applied the law. There is nothing in defendant's objections which is not correctly addressed by the magistrate judge at docket 708. This court adopts Magistrate Judge Roberts' thorough analysis and his recommended findings and conclusions. Based thereon, the motion at docket 693 is **DENIED** as to Ground One and **GRANTED** as to Ground Two.

DATED at Anchorage, Alaska, this 2<sup>nd</sup> day of December 2012.

/s/ JOHN W. SEDWICK  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup>*Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989), *overruled on other grounds by Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996).

<sup>3</sup>28 U.S.C. § 636(b)(1).

<sup>4</sup>*Taberer v. Armstrong World Industries, Inc.*, 954 F.2d 888, 906 (3d Cir. 1992).